

The more appropriate regulatory response to the concern regarding CLEC terminating access rates is to follow the Commission policy "since *Competitive Carrier* [which] has consistently been that a carrier is non-dominant unless the Commission makes a finding that it is dominant."^{21/} Using this policy as a guide, the Commission should, first, prescribe just and reasonable rates for terminating access services provided by incumbent LECs. After some predetermined period of time, the Commission should evaluate the marketplace response of competitive LECs to the dominant carrier's reduced rates. If the CLEC continues to charge "egregiously high" rates for terminating access, then the Commission should initiate a proceeding to determine a CLEC's market dominance with respect to this service. Rate regulation should be considered only if the CLEC is deemed dominant, although access charge reform may have created other options.

Ultimately, if ILEC terminating access rates are prescribed at just and reasonable levels, the Commission need not regulate CLEC rates. An insistence to do so reveals either the Commission's lack of faith in the ability of marketplace forces to drive prices down or an unwillingness to allow those forces an opportunity to work. A lack of faith would be striking, given that the Commission appears to favor a "market-based" approach to access charge reform and would rely on marketplace forces to drive interstate switched access rates to forward-looking economic cost. It would be similarly striking if the

^{21/} *Id.*

Commission were unwilling to allow those marketplace forces an opportunity to work in the terminating access market. If, as the Commission contends, competitive pressures from resellers and market entrants are sufficient to drive ILEC access rates to cost, then pressures emanating from the ILEC's reduced terminating access charges should be more than adequate to drive CLEC access rates down, as well.

IX. THE ENHANCED SERVICE PROVIDER EXEMPTION IS NOT WARRANTED IN A REFORMED ACCESS CHARGE ENVIRONMENT

Responsive to Section VIII.B: Other Issues: Treatment of Interstate Information Services

A. Internet Access Providers Would Pay Increased SLCs In A Reformed Environment

The Commission tentatively, and correctly, concludes not to extend the *existing* access charge system to Internet access providers and other enhanced service providers (ESPs).^{22/} This continued exemption, however, is offset by the Commission's proposal to increase or eliminate the current \$6.00 monthly cap on subscriber line charges (SLCs) for multi-line business customers, which negatively impacts Internet access providers. If adopted, SLC increases for these customers translate into an indeterminate rate increase for each line. Such rate increases contravene the economic cost principles and stated goals of this proceeding, as discussed above.

^{22/} Notice at ¶ 288 (emphasis added).

Internet access providers, then, will be paying more if this proposed "reform" to the access charge system is adopted. In fact, they may be subject to unilateral rate increases by ILECs, their potential or actual competitors, because the Commission has concluded that if the SLC cap is eliminated, the Commission "would not prohibit an incumbent LEC from charging a SLC . . . for all lines for multi-line business customers that exceeds the per-line loop costs assigned to the interstate jurisdiction."^{23/} Additionally, ISDN SLCs imposed on any basis other than per-facility would impose significant rate increases on these providers, particularly if they use PRI ISDN services.

Rather than place Internet access providers in such a competitively-disadvantageous position by maintaining their "multi-line business customer" status and quietly imposing a rate increase on each line, the Commission should prescribe economically efficient rates, make certain regulatory adjustments, and repeal its ESP exemption.

The Commission should not wait to consider and determine the applicability of reformed access charges to ESPs. If access rates are set so as to exclude non-cost components - including both implicit and explicit subsidy elements and the multi-billion dollar "gap" between ILEC costs and rates - then those charges will not be so excessive as

^{23/} Notice at ¶ 65. Those costs, of course, refer to ILEC embedded costs as determined in the 1980s.

to "stifle growth, investment, and innovation in information services, causing detrimental effects for the economy and U.S. competitiveness."^{24/}

B. Subsidy-Free Access Rates Eliminate The Rationale For An ESP Exemption

The Commission correctly expresses concern as to the negative consequences associated with the imposition of access charges "as currently constituted." Those concerns, however, are not limited to information service providers, but apply with equal validity to providers of telecommunications services and their customers. These grossly-inflated charges, which account for nearly half the cost of a long-distance call, act as a drag on growth, investment, and innovation in telecommunications and the balance of the economy.

Information services - and, in particular, Internet access - are no longer infant industries that require special protective treatment. Information services such as telemessaging and credit card validation are well-established. And, as the Commission notes, over 2,000 companies offered Internet access as of mid-1996.^{25/} While the access charge exemption may have been warranted in 1983, when first implemented as a temporary measure, competitive developments since then have seriously eroded underlying policy rationales. A reformed system in which access is set at forward-

^{24/} Notice at ¶ 287.

^{25/} Notice at ¶ 285.

looking economic cost eliminates any remaining rationale. At that point, access is set at a level that constitutes only a fraction of current charges.

C. The ESP Exemption Undermines The Development Of Competitive Market Forces

The ESP exemption sends distorted price signals in a "reformed" access environment, a point implicitly conceded by ESPs themselves. The Commission notes that ESPs contend that "the rates they pay to incumbent LECs, combined with the additional revenues from sources such as second lines installed for Internet usage, more than cover the costs they impose on the network."^{96/} This argument essentially asks the Commission to overlook cost causation principles and revert to historical rate designs under which certain services, such as second lines, subsidize other services, such as Internet access. This is the very approach that the 1996 Act intends to eliminate.

Moreover, because the exemption minimizes the ESPs' incentives to seek competitive alternatives to ILEC access services, it undermines the very "marketplace forces" that the Commission is relying on, under its market-based approach to access reform, to drive access to forward-looking cost. The Commission implicitly recognizes that the exchange access market is not now competitive, nor is it likely to be competitive in the immediate future. If competition indeed existed, "potential" competition in the local market would not trigger Phase One deregulatory relief, nor would a single "actual

^{96/} Notice at ¶ 287. The degree to which this argument presupposes that the second line is dedicated to Internet use is unclear.

competitive presence" trigger Phase Two relief. If it chooses to retain the access exemption for ESPs under these circumstances, the Commission will contravene its long-standing policy of ensuring its action replicates competitive forces in non-competitive markets. More importantly, given the explosive growth of the Internet, a continued exemption will eviscerate whatever "marketplace forces" the Commission believes operate in the exchange access market.

The Commission suggests that ESP exemption may be appropriate because the access charge system was "designed for circuit-switched interexchange voice telephony."^{27/} This suggestion should be taken one step further by exploring the *purpose* for which that system was initially created. As discussed in Section III, above, the access charge regime was established primarily to (1) encourage the development of a competitive interexchange market and (2) provide a source of explicit and implicit universal service subsidies. These purposes have been either served or supplanted.

If the Commission elects to retain both the access charge regime and the ESP exemption, continued regulatory involvement will be required to distinguish between "information service providers" and "telecommunications providers," as well as between different types of ESPs, a task certain to be complicated by evolving technologies. Eliminating the exemption is the more deregulatory approach in a reformed access charge environment. Ultimately, it is also the more pro-competitive approach, since "reformed"

^{27/} Notice at ¶ 288.

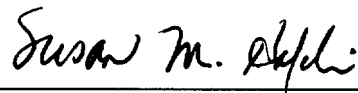
and equitably-distributed charges will eliminate the drag on growth, investment, and innovation that existing access charges place on telecommunications markets.

X. CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully urges the Federal Communications Commission to maintain and further the pro-competitive deregulatory goals enunciated in the Telecommunications Act of 1996 by adopting a prescriptive approach to access charge reform, setting access rates on the basis of forward-looking economic costs and thereby encouraging the emergence of facilities-based competition, and by taking other action consistent with the views expressed herein.

Respectfully submitted,

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Dated: January 29, 1997

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
(TEXARKANA DIVISION)

BELL ATLANTIC CORPORATION)	
and)	
DSC COMMUNICATIONS CORPORATION,)	
)	
Plaintiffs,)	Civil Action No.
)	
v.)	JURY TRIAL DEMANDED
)	
AT&T CORPORATION)	
and)	
LUCENT TECHNOLOGIES INC.,)	
)	
Defendants.)	
)	

COMPLAINT
Nature and Scope of Action

1. This complaint seeks treble damages and injunctive relief to redress injuries being caused by AT&T's monopolization and attempted monopolization of certain types of telecommunications equipment and caller identification services. This complaint is also filed against AT&T's new wholly-owned subsidiary, Lucent Technologies, which is inheriting AT&T's equipment monopoly.

2. **Equipment claims.** Since 1986, AT&T has sold over \$3 billion of local telephone switches to Bell Atlantic. Bell Atlantic is "locked-in" to the AT&T switches with switches from another manufacturer.

3. DSC Communications Corporation is a competitor of AT&T for some of the "aftermarket" equipment that Bell Atlantic needs to purchase for use with the AT&T switches. To function properly, DSC's equipment needs to connect to the AT&T switches. These connections could, should, and (but for AT&T's conduct) would be made through industry-standard plugs, or interfaces, in the same way that standard wall plugs let ordinary telephones from any manufacturer connect to a telephone line.

4. AT&T could compete for sales of aftermarket equipment on the basis of price and quality, but it hasn't. Instead, AT&T is purposely stifling competition by delaying and preventing the provision of the industry-standard plugs that rivals like DSC need to connect aftermarket equipment to the AT&T switches. AT&T has a long history of resisting other companies' attempts to plug their equipment into AT&T's. For example, two decades ago AT&T resisted simple wall plugs for ordinary telephones.

5. The amount of competition that AT&T is foreclosing is substantial and the injury to plaintiffs is severe. Bell Atlantic estimates that AT&T's conduct relating to equipment has caused in excess of \$450 million in damages to Bell Atlantic (before trebling) from lost profits and increased operating costs. DSC estimates that AT&T's conduct has caused in excess of \$500 million in damages to DSC (before trebling) from lost profits and increased operating costs.

6. **Caller ID claim.** AT&T has also taken actions to cripple a service offered by Bell Atlantic that allows customers to know who is calling before they answer the telephone. The service is known as

"Caller ID." Using a small box attached to their telephones, customers can use this service to see the telephone number -- or the name -- of the person who is calling.

7. Despite its value to consumers, AT&T seeks to cripple Caller ID service because sometimes users of the service see who is calling and decide not to answer the telephone. When the phone is not answered, AT&T risks losing the sale of a long distance telephone call. In addition, many customers -- particularly business customers -- can use Caller ID to answer a telephone call more efficiently and quickly. This means that AT&T may sell only a shorter and less expensive telephone call.

8. AT&T itself sells a type of Caller ID service to business customers and certain other customers, and is preparing to sell new types of Caller ID services to still more customers. AT&T would prefer that Bell Atlantic not be able to compete with these services.

9. In order to prevent Bell Atlantic from selling Caller ID service for use in connection with any incoming AT&T long distance calls and to advantage AT&T's own Caller ID Service, AT&T has intentionally stripped out and blocked calling numbers from passing through the AT&T long distance network. AT&T's action prevents Bell Atlantic's Caller ID customers from knowing who is calling on most long distance calls. By contrast, AT&T does not strip out the calling numbers when it provides its own competing Caller ID services.

10. The issue of AT&T's conduct was the subject of a federal regulatory proceeding. The Federal Communications Commission heard, then rejected, the justifications AT&T sought to advance for its crippling of any Caller ID service that would supply customers with long distance numbers. Effective December 1995, the Commission ordered AT&T to stop stripping out calling numbers and to let them pass through the AT&T network.

11. For the past four years, Bell Atlantic has suffered a severe diminution of sales of its Caller ID service as a result of AT&T's actions. Customers' number one complaint about Caller ID service has been that the service as offered (before the FCC order) did not enable them to see who was calling on all the calls.

12. Bell Atlantic estimates that AT&T's conduct relating to Caller ID has caused in excess of \$200 million in damages to Bell Atlantic (before trebling) from lost profits.

Jurisdiction and Venue

13. This action is instituted under Sections 4 and 16 of the Clayton Act, 15 U.S.C. " 15, 26, to redress and prevent injuries caused by AT&T's and Lucent's violations of Section 2 of the Sherman Act, 15 U.S.C. ' 2. This Court has jurisdiction pursuant to 28 U.S.C. " 1331 and 1337. The action also states claims under state law arising from the same conduct. Jurisdiction exists under 28 U.S.C. ' 1367. Venue is proper in this district under Section 12 of the Clayton Act, 15 U.S.C. ' 22, and 28 U.S.C. ' 1391, because AT&T and Lucent maintain offices, have agents, transact business, and are found in this district.

The Parties

14. Plaintiff ***Bell Atlantic Corporation*** is a Delaware corporation headquartered in Philadelphia, Pennsylvania. Bell Atlantic's local telephone companies currently provide telephone service in the mid-Atlantic region of the United States. Bell Atlantic has announced plans to provide long-distance telephone service in the State of Texas in competition with AT&T.

15. Plaintiff ***DSC Communications Corporation*** is a Delaware corporation headquartered in this district in Plano, Texas. Through its subsidiaries, DSC manufactures telecommunications equipment and software in competition with AT&T in various locations throughout the United States, including in this district.

16. Defendant **AT&T Corporation** is a New York corporation headquartered in New York, New York. AT&T transacts business everywhere in the United States, including in this district. In 1995, AT&T had revenues of nearly \$80 billion. AT&T is the largest provider of long distance services and, through its subsidiary Lucent, is the largest manufacturer of telecommunications equipment in North America.

17. Defendant **Lucent Technologies Inc.** is a Delaware corporation headquartered in Murray Hill, New Jersey. Lucent was recently incorporated as a wholly-owned subsidiary of AT&T and has never operated as a stand-alone company. AT&T recently transferred all or part of its manufacturing business to Lucent in preparation for AT&T's plans to divest that business by December 31, 1996. Throughout this complaint, AT&T Corp. and Lucent are referred to collectively as "AT&T."

Trade and Commerce

18. The following separate product and service markets are relevant to this action:

- a. The market for **digital telephone switches**, a type of specialized equipment that routes calls over telephone lines. Digital telephone switches are the "heart and soul" of modern local telephone networks. This market has an important submarket consisting of **high-end digital telephone switches** that are sold for use in densely populated areas or to provide advanced features to customers that have special requirements.
- b. The market for **switch applications software**, which is the computer code for providing additional or improved telephone services. This software can be supplied to run directly on a digital telephone switch, or it can run on a separate computer connected to the switch.
- c. The market for **transmission equipment**, which carries calls between subscribers and the switch.
- d. The market for **caller identification services**, which allow the person receiving a call to learn the name or telephone number of the caller.

19. At all times pertinent to this complaint, AT&T has sold digital telephone switches, high-end digital telephone switches, switch applications software, and transmission equipment in interstate commerce. AT&T has also provided Caller ID, related caller identification services, and long distance service in interstate commerce.

Digital Telephone Switches and High-End Digital Telephone Switches

20. The U.S. market for digital telephone switches is a duopoly, with AT&T holding the majority share of the market. AT&T has substantial market power in sales of new switches.

21. Nationwide, approximately 90 percent of the installed base of local digital telephone lines is connected to switches manufactured by only two companies: AT&T and Northern Telecom. Fifty-eight percent of these lines are connected to AT&T switches, and 32 percent are connected to Northern Telecom switches. The same lopsided duopoly exists for new sales. In 1994, AT&T and Northern Telecom switches accounted for over 90 percent of all new lines of digital switching installed nationwide; approximately 60 percent of all new lines of digital switching was sold by AT&T. The market for local digital telephone switches has a Herfindahl-Hirschman Index score above 4000 -- more than two times higher than the score that federal antitrust regulators consider sufficient to indicate a "highly concentrated" market.

22. Entry barriers are high. Since 1984, several foreign switch manufacturers have attempted to enter the U.S. market. All but one have exited the market.

23. Different manufacturers' switches are not perfectly substitutable. AT&T's switch, known as the

"No. 5ESS," is preferred by customers over other switches for use in densely-populated areas or to provide advanced features to customers with special requirements. In the submarket for high-end digital telephone switches, AT&T has even greater market power than in the market for digital telephone switches as a whole.

24. Beginning in 1986, Bell Atlantic has purchased 400 of AT&T's No. 5ESS switches at a cost of over \$3 billion.

25. These switches have a useful life of more than 15 years and relatively little if any resale value. As a consequence, if Bell Atlantic attempted to exchange its embedded AT&T switch base for the switches of another manufacturer, it would lose most or all of the present value of its investment in the AT&T switches.

26. In addition, if Bell Atlantic attempted to replace all of its AT&T switches, the remaining switch manufacturers could not meet this demand in a reasonable period, because of differences in switch features, quality problems, and limitations in their manufacturing capacity.

27. Consequently, it is neither financially nor commercially feasible for Bell Atlantic to replace its AT&T switches with switches from another manufacturer.

28. In its capacity as manufacturer, AT&T controls two vital interfaces with the No. 5ESS switch: the interface with transmission equipment and the interface with switch applications software.

29. In its capacity as a long distance provider, AT&T controls a third vital interface to all local telephone switches (whether manufactured by AT&T or someone else): the interface with AT&T's long distance network.

30. AT&T has disabled and sabotaged each of these three interfaces in order to monopolize (and attempt to monopolize) the adjacent markets that depend upon those interfaces. **Figure 1.**

Transmission Equipment

31. Transmission equipment requires an interface, or plug, through which to connect to a switch. Prior to 1984, there was no standard, efficient plug for transmission equipment in AT&T's switches. The absence of a plug guaranteed AT&T continued sales of high-margin, expensive line cards which are needed to connect customers to the switch.

32. In 1985 and 1986, engineers employed by Bell Atlantic and other local telephone companies defined standard specifications for a plug that could be inserted into AT&T switches to allow other manufacturers' transmission equipment to connect efficiently to the switch without the use of expensive line cards. (This specification is sometimes referred to in the industry as Technical Reference 303, or "TR-303.") AT&T's engineers endorsed this specification, and AT&T feigned cooperation in the development of a plug that would operate on this specification. **Figure 2.**

33. Only AT&T possesses the necessary technical information and ability to produce this plug for its switches. A customer cannot feasibly obtain this plug from anyone but AT&T.

34. Rather than produce this plug, however, AT&T purposely delayed and sabotaged it. Although the plug was first specified in 1986, AT&T did not produce any version of it until September 1992.

35. When AT&T finally provided a TR-303 plug, AT&T had designed it in a way that prevents other manufacturers' transmission equipment from operating properly with AT&T's switches. AT&T then repeatedly delayed compatibility testing of its equipment with the equipment of DSC, and refused to make available to DSC nonproprietary flow diagrams that could have speeded up the compatibility testing. AT&T also set prices for the plug designed to make the plug cost less when used with AT&T equipment and more when used with its competitors' equipment.

36. This conduct has stifled the development of competition in the market for transmission equipment that connects to AT&T switches. It has prevented DSC from competing with AT&T on price and quality, resulting in increased costs and lost sales. And it has forced Bell Atlantic to pay inflated charges for transmission equipment, forced Bell Atlantic to incur increased operational costs, and prevented Bell Atlantic from offering profitable new services desired by consumers.

Switch Applications Software

37. To function, digital telephone switches need software. When AT&T sells a No. 5ESS switch, it comes with software installed.

38. After a switch is sold, AT&T offers for sale applications software as a series of upgrades to the original switch software. New applications software is continually needed to permit telephone companies to comply with changes in the way telephone service is provided and to offer new services.

39. In the mid-1980s, scientists employed by Bell Atlantic and other local telephone companies defined industry standard specifications for interfaces, or plugs, that could be inserted into the switch software to allow other software companies to develop their own applications software running on separate computers connected to the switches. AT&T's engineers endorsed these specifications, and AT&T feigned cooperation in the development of plugs that would operate according to the specifications.

40. Only AT&T possesses the necessary technical information and ability to produce the plugs for its switches. A customer cannot feasibly obtain these plugs from anyone but AT&T. **Figure 3.**

41. Over the life of a switch, AT&T earns nearly as much revenue selling software upgrades as it earns selling the original switch; aftermarket software upgrades account for between 30% and 40% of AT&T's switch-related revenues. It is more profitable for AT&T to sell an endless series of expensive upgrades to the basic switch software than to provide the standardized plugs that would permit subsequent applications software to be provided competitively.

42. Contrary to its initial assurances of cooperation, AT&T has prevented the development of competition for applications software by purposely stalling, preventing, and ultimately refusing to provide the plugs necessary to allow other firms to connect their applications software to AT&T switches. On occasion, AT&T has pretended to deliver the necessary plugs but in fact has delivered plugs that did not function properly.

43. As a result, AT&T provides nearly 100% of the applications software for its No. 5ESS switch. AT&T has used its domination of this market to preclude DSC from selling applications software and related products in competition with AT&T and to force Bell Atlantic to pay inflated charges for applications software. AT&T has also used its domination of applications software to prevent Bell Atlantic from offering new services to subscribers, causing Bell Atlantic to lose significant revenues.

44. For example, Bell Atlantic had planned to develop its own applications software to recognize toll-free calls to telephone numbers that begin with "888." Because AT&T refused to provide the plug that would have allowed other companies to develop this software, Bell Atlantic had no choice but to deal with AT&T, which charged \$8 million for the software -- much more than Bell Atlantic would have spent to develop the software itself or to purchase the software from competing firms.

45. In another example, Bell Atlantic wanted to offer a service known as "voice dialing," which allows customers simply to speak a name rather than dial the telephone number. Bell Atlantic had planned to develop its own applications software to provide this service. Because AT&T refused to provide the needed plug, Bell Atlantic again had no choice but to deal with AT&T, which charged \$10 million for the software.

46. AT&T's conduct has also prevented DSC from selling applications software and related products in connection with the No. 5ESS switch. By contrast, DSC has been able to sell its applications software products in Europe, where the switch manufacturers have developed the plugs needed to allow competition.

47. Plaintiffs' injuries are likely to worsen as AT&T begins to compete with Bell Atlantic and other AT&T equipment customers in the provision of local telephone services. As a direct competitor to Bell Atlantic, AT&T can gain additional business and profits as a result of the injuries it inflicts on Bell Atlantic by using its equipment power. AT&T has acknowledged that this conflict of business interests is so severe, based on AT&T's experience, that it has transferred its equipment business to Lucent and announced that it will divest Lucent by the end of 1996. The "solution," however, is more one of appearance than reality. Lucent has agreed to continue to supply AT&T's services business on a preferential basis, and AT&T rather than Lucent will continue to hold critical technical information and intellectual property rights that could be used by AT&T to block competing equipment vendors' products.

Caller ID

48. Caller ID is a service that lets the person receiving a call see the phone number or name of the caller before answering the phone. This service lets customers avoid unwanted or harassing phone calls. **Figure 4.**

49. AT&T has admitted that the use of Caller ID service to refuse unwanted calls means lower profits for AT&T, because AT&T charges callers only for completed (answered) phone calls. Even if a person answers the phone and stays on the line just a few seconds to identify the caller and then hangs up, AT&T often bills the caller for a full one-minute call.

50. In addition to curbing unwanted or harassing calls, Caller ID allows people to answer calls more efficiently. In particular, businesses can use Caller ID to reduce the length of an average business phone call by 20 to 30 seconds. Shorter calls, however, mean lower profits for AT&T.

51. When different telephone companies, such as Bell Atlantic and AT&T, connect their telephone networks together, they typically pass the calling numbers back and forth to each other. If the calling numbers are stripped out or blocked, Caller ID service will not work, and the customer receives a message such as "Number Unavailable." **Figure 5.**

52. At all times pertinent to this complaint, 60 to 70 percent of all long-distance calls were carried by AT&T.

53. It is not feasible for Bell Atlantic to obtain the calling number on a long distance call except from the long distance company carrying that call. Bell Atlantic cannot, for example, transfer the call to another long distance carrier, because it is usually the person who made the long distance call, not the person who receives it, who selects the long distance carrier.

54. Bell Atlantic began offering a Caller ID service to customers in 1988. From at least 1991 until December 1995 and later, AT&T purposely has sabotaged Bell Atlantic's ability to offer a Caller ID service that worked on long distance calls. Although Bell Atlantic and all other local telephone companies provide calling numbers to AT&T, AT&T actively strips these numbers out before handing calls back to Bell Atlantic.

55. Beginning in 1991 or earlier, Bell Atlantic and other telephone companies requested that AT&T stop stripping the calling numbers from long-distance calls. AT&T consistently has refused to do so.

56. AT&T's actions have anticompetitively harmed consumers in related ways:

a. First, AT&T's actions have destroyed a consumer-preferred substitute for its primary product, long-distance talk time, and thus forced artificially inflated purchases of long-distance minutes. Both an electronic Caller ID service and the first few seconds of any conversation provide the same information -- identification of who is making the call. Caller ID offers customers the ability to obtain that information efficiently and electronically, before they even answer the phone, and millions of consumers would prefer to obtain it that way. AT&T, however, has foreclosed the service, because it profits when customers use the less efficient method of answering the phone and asking the caller to identify him or herself; if the call is not answered or is efficiently shortened because of Caller ID, AT&T loses revenues.

b. Second, AT&T currently offers its own electronic caller identification service to at least two sets of customers -- customers for reverse-billed or "800" service, and customers for cellular telephone service. AT&T also is preparing to offer Caller ID or similar services to additional customers. By stripping out the calling numbers, AT&T has prevented Bell Atlantic from competing with AT&T's services.

57. The Federal Communications Commission ordered AT&T, effective December 1, 1995, to cease stripping calling numbers. The FCC found that AT&T has no legitimate business justifications for this conduct. The FCC, however, did not (and could not) rule whether AT&T has violated the antitrust laws. The FCC also did not order AT&T to stop stripping out other customer information, such as the name of the caller. Even aside from compensation for the past harm, therefore, a remedy from this Court continues to be required.

CAUSES OF ACTION COUNT I

Monopolization or Attempted Monopolization of the Transmission Equipment Market

58. The foregoing paragraphs are incorporated herein by reference.

59. AT&T's conduct constitutes the intentional and unlawful maintenance of monopoly power in the relevant market for transmission equipment connected to AT&T switches, in violation of ' 2 of the Sherman Act, 15 U.S.C. ' 2.

60. In the alternative, AT&T's conduct is an attempt to monopolize this market in violation of ' 2 of the Sherman Act, 15 U.S.C. ' 2. AT&T has acted with specific intent to attempt to monopolize this market, and has sufficient market power to create a dangerous probability of success of monopolizing the market.

61. AT&T has the power to control prices or exclude competition in the relevant transmission equipment market by virtue of (a) its concentrated market share, and (b) its control over the interface between AT&T switches and connected transmission equipment.

62. AT&T has excluded, or attempted to exclude, competition in this market by delaying and thwarting the implementation of the industry standard TR-303 interface between AT&T's switches and transmission equipment provided by other manufacturers.

63. AT&T's conduct has injured competition in the relevant market for transmission equipment, suppressed sales of DSC's products, increased DSC's development and marketing costs, diminished DSC's future sales opportunities, caused Bell Atlantic to pay greater than competitive prices for transmission equipment, increased Bell Atlantic's operating costs, and prevented Bell Atlantic from offering new services to consumers.

COUNT II

Monopolization or Attempted Monopolization of the Applications Software Market

64. The foregoing paragraphs are incorporated herein by reference.

65. AT&T's conduct constitutes the intentional and unlawful maintenance of monopoly power in the relevant market for applications software for AT&T switches in violation of ' 2 of the Sherman Act, 15 U.S.C. ' 2.

66. In the alternative, AT&T's conduct is an attempt to monopolize this market in violation of ' 2 of the Sherman Act, 15 U.S.C. ' 2. AT&T has acted with specific intent to attempt to monopolize this market, and has sufficient market power to create a dangerous probability of success of monopolizing the market.

67. AT&T has the power to control prices or exclude competition in the relevant applications software market by virtue of (a) its overwhelming market share, and (b) its control over the interface between AT&T switches and connected applications software.

68. AT&T has excluded, or attempted to exclude, competition in this market by using its control over switch software to thwart the deployment of standard interfaces between AT&T switches and applications software designed to work with those switches.

69. AT&T's conduct has injured competition in the relevant market for applications software, suppressed the development and sales of DSC's and Bell Atlantic's applications software and related products, diminished DSC's and Bell Atlantic's future sales opportunities, caused Bell Atlantic to pay greater than competitive prices for switch applications software, and prevented Bell Atlantic from offering new services to consumers.

COUNT III**Monopolization or Attempted Monopolization of the Markets for Caller Identification Services**

70. The foregoing paragraphs are incorporated herein by reference.

71. AT&T's conduct constitutes the intentional and unlawful monopolization of the relevant markets for caller identification services, in violation of ' 2 of the Sherman Act, 15 U.S.C. ' 2.

72. In the alternative, AT&T's conduct is an attempt to monopolize the markets in violation of ' 2 of the Sherman Act, 15 U.S.C. ' 2, and AT&T has sufficient market power to create a dangerous probability of success of monopolizing the markets.

73. AT&T has the power to control prices or exclude competition in the relevant markets by virtue of its control over delivery of calling numbers for the vast majority of long distance calls.

74. AT&T has refused to provide local telephone companies with the calling party's number on long distance calls.

75. AT&T's conduct has injured competition in the relevant markets for caller identification services and prevented Bell Atlantic from offering new services to consumers. Specifically:

a. AT&T has prevented Bell Atlantic from offering Caller ID to large business customers, wireless customers, and other customers in competition with AT&T's present and planned Caller ID services.

b. AT&T has prevented Bell Atlantic from offering long distance and complete Caller ID as a substitute for minutes of long distance calling time.

COUNT IV

Violation of Texas Antitrust Law

76. The foregoing paragraphs are incorporated herein by reference.

77. AT&T's conduct constitutes willful and flagrant monopolization of, or attempts to monopolize, relevant markets in violation of the Texas Free Enterprise and Antitrust Act, Texas Bus. & Comm. Code ' 15.01, et seq.

COUNT V

Interference with Prospective Relations

78. The foregoing paragraphs are incorporated herein by reference.

79. AT&T's conduct constitutes the tortious, intentional, improper, unprivileged, and unlawful interference with plaintiffs' prospective business or contractual relations.

Relief Requested

WHEREFORE, plaintiffs ask for the following relief:

80. An award to plaintiffs of their actual damages, trebled pursuant to Section 4 of the Clayton Act, 15 U.S.C. ' 15.

81. An award to plaintiffs of punitive damages under state law.

82. An injunction requiring AT&T and Lucent to take all steps to implement the interfaces and plugs needed to allow open competition in applications software and transmission equipment.

83. An injunction requiring AT&T to take all steps to permit the passage through the AT&T network of all calling party information.

84. An award to plaintiffs of their costs, including reasonable attorney's fees, as provided in Sections 4 and 16 of the Clayton Act, 15 U.S.C. " 15 and 26.

85. Such further relief as the Court may deem just and equitable.

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